

ORIGINAL

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**



In the Matter of)
)
MSC.SOFTWARE CORPORATION,)
a corporation.)
_____)

Docket No. 9299

To: The Honorable D. Michael Chappell
Administrative Law Judge

**COMPLAINT COUNSEL'S MOTION TO COMPEL
AN EXPEDITED ANSWER TO THIS MOTION AND
COMPLIANCE WITH COMPLAINT COUNSEL'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND THINGS**

Complaint Counsel moves to compel Respondent to comply with Complaint Counsel's First Request for Production of Documents and Things ("the Document Request), served on Respondent November 21, 2001 (attached as Exhibit A), as modified by Complaint Counsel's letter of December 26, 2001 (attached as Exhibit B). Respondent has failed to live up to its promise to complete production of responsive documents, including electronic documents and e-mails, by May 10, 2002. At this late date in the pre-trial discovery schedule, we believe that Your Honor's intervention is necessary to compel Respondent to respond in expedited fashion to this motion, and further, to comply with the Document Request. A draft Motion to Compel is attached as Exhibit C.

Over the course of several months, Complaint Counsel and Counsel for Respondent have worked diligently to resolve document discovery disputes, including those having to do with electronic document and e-mail discovery. On April 3, 2002, Respondent agreed on the individuals whose files would be searched for responsive e-mails and electronic documents.

Letter from Marimichael O. Skubel, Kirkland and Ellis, to Karen Mills, April 3, 2002. (Exhibit D). Respondent expressed its intention to conduct the search for responsive electronic documents and e-mails electronically, using a contractor, and Complaint Counsel worked with Respondent to reach agreement on the electronic search terms to be used in the electronic search. After reaching agreement on the search terms, Respondent notified Complaint Counsel on April 25, 2002, that the contractor had finalized writing the query using the agreed electronic search terms, and review of the electronic documents using the query had begun. Respondent told Complaint Counsel that it would make a rolling production of responsive documents and expected to complete production of the electronic documents by May 10, 2002. Respondent described this estimated completion date as "playing it safe."

Complaint Counsel became concerned at the slow pace at which documents were being produced in the rolling production, and contacted Respondent about it. On April 29, 2002, Respondent reported that the electronic search had produced 27 boxes from Ken Blakely, MSC's Senior Vice President and General Manager, to review for privilege and responsiveness, but Respondent still has not produced even one box of Mr. Blakely's documents to Complaint Counsel. Respondent also has reported that the electronic search produced 70 boxes of potentially responsive documents from Jeff Morgan, MSC's Vice President of, Software and Business Development, and a former UAI senior executive, and 53 boxes of potentially responsive documents from Rick Murphy, MSC's Senior Vice President, Global Sales Operations, but none of these documents have been processed and produced to Complaint Counsel. Respondent has not told Complaint Counsel whether other persons' electronic and e-mail documents have been searched and produced for review by counsel, or the total number of

potentially responsive documents still to be reviewed from other persons.

Respondent notified Complaint Counsel on May 9, 2002, just one day before the promised production was due, that it would not complete production by that date. Respondent refuses to offer any prediction or promise as to the date by which it intends to complete production. Complaint Counsel therefore requests that Your Honor issue an Order requiring Respondent to comply with the Document Request by May 17, 2002. The close of discovery is approaching rapidly, and Complaint Counsel and Complaint Counsel's expert witnesses have an urgent need to review these and any other responsive documents, so that Complaint Counsel can prepare for trial and meet its obligations under the Scheduling Order. Since Respondent's failure to comply with the Document Request, five and one-half months after it was issued, and just less than three weeks before the close of discovery is so detrimental to Complaint Counsel's discovery and trial preparation, Complaint Counsel requests that Your Honor order Respondent to reply to this Motion by May 13, 2002.

Respondent's counsel has told Complaint Counsel that it has significantly reduced the number of people reviewing documents due to Respondent's financial condition, but Respondent's financial condition is not a cognizable basis for refusal to comply with discovery. Complaint Counsel have done everything possible to tailor the Document Request and scope of search to minimize the burden on Respondent, and in doing so has relied in good faith on its counsel's representations concerning the scope and timing of the production that would be made by Respondent as a result.

For all the reasons stated above, Complaint Counsel respectfully request issuance of the attached Order compelling Respondent to file an expedited answer to this Motion by May 13,

2002 (Exhibit E), and an Order Compelling Respondent to Comply with Complaint Counsel's
First Request for Production and Things by May 17, 2002 (Exhibit C).

May 10, 2002

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "P. Abbott McCartney", written over a horizontal line.

P. Abbott McCartney

Peggy D. Bayer

Michael Cowie

Kent E. Cox

Karen A. Mills

Nancy Park

Patrick J. Roach

Counsel Supporting the Complaint

Bureau of Competition

Federal Trade Commission

Washington, D.C. 20580

(202) 326-2695

Facsimile (202) 326-3496

CERTIFICATE OF SERVICE

This is to certify that on May 10, 2002, I caused a copy of Complaint Counsel's Motion to Compel Compliance with Complaint Counsel's First Request for Production of Documents and Things to be served via hand-delivery upon the following persons:

The Honorable D. Michael Chappell
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Marimichael O. Skubel, Esquire
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 879-5034
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Counsel for MSC Software Corporation



J. Dennis Hacketts
Bureau of Competition
Federal Trade Commission
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promised that Respondent was prioritizing production of documents from persons who Complaint Counsel had subpoenaed for deposition (Messers. Blakely, Morgan, Murphy, Dyer in the first group, and Messers. Perna, Greco, and Dimas and Ms. Smith in the next group).

6. During our telephone conversation on May 9, 2002, Ms. Skubel suggested that Respondent might be able to speed up its production of the electronic documents and e-mail if it could redeploy law firm personnel who were doing confidentiality designation of documents. I told Ms. Skubel that Complaint Counsel did not object to Respondent's postponing confidentiality designation so long as those resources committed to that task were redeployed to electronic document production, so long as Respondent agreed to respond promptly to Complaint Counsel's requests for permission to use documents with third parties, and so long as Respondent assigned proper confidentiality designations to all documents identified as trial exhibits promptly after their identification.

7. Even with that accommodation, in our telephone conversation on May 9, 2002, Ms. Skubel refused to predict or promise when Respondent would complete the electronic document and e-mail production.

May 10, 2002



Karen A. Mills

Exhibit A

representatives of the foregoing. The terms "subsidiary", "affiliate" and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control by CSAR. When "company" is used in any specification, it includes CSAR for purposes of producing documents, information, and things separately for CSAR.

- D. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody or control of the company. The term "documents" includes electronic correspondence and drafts of documents, copies of documents that are not identical duplicates of the originals, and copies of documents the originals of which are not in the possession, custody or control of the company. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Unless otherwise specified, the term "documents" excludes bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature and also excludes architectural plans and engineering blueprints.
- E. The term "person" includes the company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- F. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating or in any way referring to.
- G. The term "documents sufficient to show" means documents that are necessary and sufficient to provide the specified information. If summaries, compilations, lists, or synopses are available that provide the information, these may be provided in lieu of the underlying documents.
- H. The terms "and" and "or" have both conjunctive and disjunctive meanings.
- I. The terms "each," "any," and "all" mean "each and every."
- J. The term "including" means including but not limited to.
- K. The singular form of a noun or pronoun includes its plural form, and vice versa; and the present tense of any word includes the past tense, and vice versa.
- L. The term "communication" means any exchange, transfer, or dissemination of information, regardless of the means by which it is accomplished.
- M. The term "agreement" or "contract" means any oral or written contract, arrangement or understanding, whether formal or informal, between two or more persons, together with all modifications or amendments thereto.

- N. The term "plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.
- O. The term "relevant product" and "relevant service" as used herein means Nastran and FEA software and any services provided in connection with or relating to either Nastran or FEA software, including maintenance, bug fixes, updates, initialization, media, transfer, product development or enhancement, customer-funded development, training, and hot line and 1-800 consultation.
- P. The term "Nastran" means all software products, regardless of platform on which the software operates, based in whole or in part on the Nastran code or Nastran kernel developed originally either by the National Aeronautical and Space Administration ("NASA") or by any person acting pursuant to a development contract with NASA, and includes any program released into the public domain by NASA or the University of Georgia; all value-added enhancements, features, modules, applications, applications programming interfaces, programming languages, and Direct Matrix Abstraction Programming ("DMAP") for any Nastran product; all products that integrate or combine Nastran with any other product; and all services relating to Nastran, including maintenance, bug fixes, updates, initialization, media, transfer, product development or enhancement, customer-funded development, training, and hot line and 1-800 consultation for Nastran products. The term also includes Nastran for Windows, MSC.FEA, Dytran, MARC, Flight Loads, Astros, Gensa, Akusmod, Working Model, Elfini, GPS, Cosmos, or any other solver licensed or sold by MSC.
- Q. The term "FEA software" means all software products offering finite element analysis, including Nastran, regardless of platform on which the software operates, and includes all value-added enhancements, features, modules, applications, applications programming interfaces, and programming languages for the software, all products that integrate or combine the FEA software with any other product, and all services relating to maintenance, bug fixes, updates, initialization, media, transfer, product development or enhancement, training, and hot line and 1-800 consultation for FEA products.
- R. The term "minimum viable scale" means the smallest amount of production at which average costs equal the price currently charged for the relevant product. It should be noted that minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.
- S. The term "non-recoverable costs" means the acquisition costs of tangible and intangible assets necessary to manufacture and sell the relevant product that cannot be recovered through the redeployment of these assets for other uses.

INSTRUCTIONS

1. Except for privileged material, the company shall produce each responsive document in its entirety by including all attachments and all pages, regardless of whether they directly relate to the specified subject matter. Except for privileged material, the company shall not mask, cut, expunge, edit or delete any responsive document or portion thereof in any manner.
2. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and information dated, generated, received, or in effect after January 1, 1995. The company shall supplement, amend, or correct the disclosure and responses to these requests on a continuing basis, within 20 days of ascertaining that it possesses any additional responsive information. This request shall be deemed continuing in nature.
3. The geographic scope of search is the world.
4. Unless otherwise indicated, in lieu of original hard-copy documents or electronically-stored documents, the company must submit legible copies. However, if the coloring of any document communicates substantive information, the company must submit the original document or a like-colored photocopy. Electronic documents shall be produced, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises. Electronic mail messages shall also be provided, even if only available on backup or archive tapes or disks. Computer files shall be printed and produced in hard copy or produced in machine-readable form (provided that Complaint Counsel determine prior to submission that it would be in a format that allows the agency to use the computer files), together with instructions and all other materials necessary to use or interpret the data.
5. Magnetic media shall be submitted in the following forms and formats:
 - a. Magnetic storage media. The FTC will accept: (1) 9-track computer tapes recorded in ASCII or EBCDIC format at either 1600 or 6250 BPI; (2) 3.5-inch microcomputer floppy diskettes, high-density, double-sided, formatted for IBM compatible computers (1.44 MB capacity); (3) Iomega ZIP disks formatted for IBM compatible PCs (100 or 250 MB capacity); (4) CD-R74 CD-ROM readable disks formatted to ISO 9660 specifications (650 MB capacity); (5) Iomega DITTO mini data cartridges (2000 MB capacity). The FTC will accept 4mm & 8mm DAT and other cassette, mini-cartridge, cartridge, and DAT/helical scan tapes by pre-authorization only. In all events, files provided on 4mm DAT cassettes must not be compressed or otherwise altered by proprietary backup programs. Where data is to be transferred from a UNIX system the FTC will accept data provided

on 8mm DAT created using TAR or DD.

b. File and record structures.

- (i) Magnetically-recorded information from centralized non-microcomputer-based systems:
 - (a) File structures. The FTC will accept sequential files only. All other file structures must be converted into sequential format.
 - (b) Record structures. The FTC will accept fixed length records only. All data in the record is to be provided as it would appear in printed format: *i.e.*, numbers unpacked, decimal points and signs printed.
- (ii) Magnetically-recorded information from microcomputers. Microcomputer-based data: word-processing documents should be in DOS-text (ASCII), WordPerfect 8 or earlier version, or Microsoft Word 2000 or earlier version format. Spreadsheets should be in Microsoft Excel 2000 (.xls) or earlier version, or Lotus-compatible (.wk1) format. Database files should be in Microsoft Access 2000 (.mdb) or earlier version, or dBase-compatible (.dbf), version 4 or earlier, format. Database or spreadsheet files also may be submitted after conversion to ASCII delimited, comma separated format, with field names as the first record, or to or fixed length fields accompanied by a record layout. Graphic images must be in TIFF 4 format, compressed and unencrypted. Other proprietary software formats for word processing documents, spreadsheets, databases, graphics and other data files will be accepted by pre-authorization only. For microcomputer files that are too large for one disk, files may be provided in a compressed ZIP format.

c. Documentation.

- (i) Data must be accompanied by the following information:
 - (a) full path name of the file; and
 - (b) the identity of the media on which on which it resides, e.g. the identity of the cd, zip disk or floppy that holds the file. In the case of complex files or directories of files, all component files that are part of a given directory must be specified with their full path names. Where necessary, the subdirectories that must be created in order to successfully read these submitted files must be provided.

- (ii) Files must be accompanied by the following information: (a) filename; (b) the identity of the particular storage media on which the file resides; (c) the position of the file on the media.
- (iii) For all sequential files, the documentation also must include:
 - (a) the number of records contained in the file;
 - (b) the record length and block size ; and
 - (c) the record layout, including the name of each element, the element's size in bytes, and the element's data type.

The documentation should be included in the same package as the storage media, along with a printout of the first 100 records in report format.

- d. Shipping. Magnetic media should be carefully packed to avoid damage, and must be shipped clearly marked: **MAGNETIC MEDIA DO NOT X-RAY.**
 - e. Virus Checks: Media will be scanned for computer viruses. Infected media will be returned for replacement.
6. As to Specification No. 22, submit all data from MSC's Oracle or other data bases in machine readable form in Excel (.xls) 2000 or prior version, or Lotus-compatible (.wkl) format, or in ASCII delimited, comma separated or fixed length field format, with field names as the first record. Additionally, Complaint Counsel wishes to consult prior to submission of responses to Specification Nos. 3 and 22 to assure that the machine readable data are in a format that allows use of the computer files.
7. Except where otherwise indicated, MSC shall respond to each specification separately for MSC, UAI, and CSAR by producing documents, information, and things based upon their original source. For example, when "company" is used in the specifications it means producing documents, information, and things separately for MSC, UAI, and CSAR.
8. The company shall mark each submitted page or sheet with its corporate identification, *i.e.*, MSC, and with consecutive document control numbers. Where documents are from the former files of UAI or CSAR, the company shall either mark each submitted page with the further corporate identification, *i.e.*, "MSC-UAI," and "MSC-CSAR" or supply a log identifying such files or documents.
9. Responsive documents from each person's files shall be produced together in file folders that segregate the person's files. Documents responsive to Specification No. 16 shall be produced in file folders segregated by customer and in chronological order within each

customer file.

10. For each box containing responsive documents the company shall:
 - a. number each box; and
 - b. mark each box with the name(s) of the person(s) whose files are contained in that box, with the name of the company originally creating the files, *i.e.*, MSC, UAI, or CSAR, and the corresponding consecutive document control numbers for each such person's documents.
11. Where identical copies are found in more than one person's files, the company must produce one copy from each person's files, or otherwise identify the person from whom identical copies of the document are found.
12. If the company has produced documents responsive to this request in the course of the pre-complaint investigation of this matter, FTC File No. 001-0077, those documents need not be produced again, unless identical copies are found in more than one person's files. In such a case, the company must produce or identify from each person's files all identical copies of documents previously produced in the pre-complaint investigation.
13. If it is claimed that any document, or portion thereof, is responsive to any request is privileged, work product, or otherwise protected from disclosure, identify such information by its subject matter and state the nature and basis for any such claim of privilege, work product, or other ground for nondisclosure. As to any such document, state or describe:
 - a. the reason for withholding it or other information relating to it;
 - b. the author and date of the document;
 - c. each individual to whom the original or a copy of the document was sent;
 - d. each individual who received the original or a copy of the document;
 - e. the date of the document or oral communication;
 - f. the general subject matter of the document;
 - g. the relevant document request the document is responsive to;
 - h. whether the document was prepared in anticipation of litigation, and if the document was prepared in anticipation of litigation, in addition provide the names

of parties, case number, and the date of the complaint filing; and

- i. any additional information on which you base your claims of privilege.

For each author, addressee, and recipient, state the person's full name, title, and employer of firm, and denote all attorneys with an asterisk. The description of the subject matter shall include the number of the pages of each document and shall describe the nature of each document in a manner that, without revealing information itself privileged or protected, will enable Complaint Counsel to assess the applicability of the privileged or protection claimed. Any part of a document to which you do not claim privilege or work product should be produced in full.

14. If there are no documents responsive to any particular request, the company shall state so in its answer to the document request.
15. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business, but the company has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify persons having knowledge of the content of such documents.
16. In lieu of original documents, the company may submit legible copies of documents so long as the company verifies with the attached form that they fully and accurately represent the originals.
17. To furnish a complete response, the person supervising compliance with this request must submit a signed and notarized copy of the attached verification form along with the responsive materials.

SPECIFICATIONS

1. One copy of each organization chart and personnel directory in effect since January 1, 1995, for the company as a whole, and for each of the company's facilities or divisions involved in any activity relating to any relevant product or service.
2. Documents sufficient to show all document retention and destruction systems, policies, procedures, capabilities, and personnel of the company:
 - a. the persons responsible for managing such systems, policies, procedures, or capabilities;
 - b. any special policies or procedures put into place by MSC as a result of the Federal

Trade Commission's investigation of the company's acquisitions of UAI and CSAR;

- c. all electronic data and document management information systems of the company;
 - d. all network-accessible documents, information and financial data systems;
 - e. all backup procedures; and
 - f. the process and cost of recovery of backup files including documents sufficient to show:
 - (i) the cost of recovery of backup files generally,
 - (ii) the cost of recovery of backup files containing documents responsive to the Federal Trade Commission's June 28, 2000, Subpoena Duces Tecum to MSC Software, and
 - (iii) the cost of recovery of backup files containing documents responsive to this document request.
3. All budget and financial statements, including financial projections, income statements, balance sheets, general ledgers, capital investment plans, operating reports, budget and operating results for individual business groups and product lines, and board or management financial performance summaries, presentations or other management reporting packages, together with all documents relied upon to compile such documents, including documents sufficient to show and all computerized data containing detailed income statement and balance sheet line items; and all documents analyzing, interpreting, or otherwise discussing the information, figures, or trends found or identified in such budget or financial statements.
4. All stock analysts' or other investment community analyses, recommendations, or research reports relating to the company, to any relevant product or service, or to computer aided engineering products and services in general, including all Daratech tables, analyses, and research reports.
5. All documents recording or relating to any communications between or among the company and any individual stock analyst or other person engaged associated with the investment community, including correspondence, press releases, notes, agendas, scripts, transcripts and recordings.

6. All documents relating to any meeting of or decision making by the board of directors or of any board, executive, or management committee, including:
 - a. all announcements of, agendas for, and minutes of any meeting;
 - b. all memoranda, reports, presentations, or other documents distributed to or presented to such board or committees, including all documents relied upon to prepare the memorandum, report, or presentation; and
 - c. all documents relating to the deliberations and decision making of the board or committee, including notes taken by any persons participating in any such meeting or decision making.

7. All documents relating to MSC's acquisitions of UAI or CSAR and the post-acquisition integration of UAI or CSAR into MSC, including:
 - a. all pre-acquisition communications between the parties relating to the transaction or its effects, including any plans, proposals, agreements, contracts, executive and employee agreements, distribution agreements, covenants not to compete, licenses, patents, copyrights, trade secrets, and trademarks;
 - b. all documents relating to changes and plans for changes in MSC's, UAI's, or CSAR's operations, structure, policies, pricing, strategies, corporate goals, financing, business, officers, employees, product lines, product features, development, or enhancements, any other area of corporate activity as a result of either acquisition, including whether to honor existing UAI or CSAR contracts;
 - c. all documents relating to former UAI and CSAR customers' continued use of UAI Nastran, CSAR Nastran, Astros, Gensa and to switching to or substitution of other products after the discontinuation of such UAI and CSAR products, including all contracts and pricing documents for such products;
 - d. all documents relating to changes or threatened changes in usage of Nastran for any customer or potential customer or changes in the company's revenue attributable to Nastran following the acquisitions;
 - e. all documents relating to the reasons for each acquisition;
 - f. all board and management committee documents relating to UAI and CSAR or to the proposed acquisitions or their effects, including memoranda, reports, correspondence, minutes, notes, presentations and agendas, as well as all documents used to prepare such memoranda, correspondence, minutes, notes,

- presentations, and agendas, Excel worksheets, and communications from regional executives or other sales representatives;
- g. all documents relating to any person's valuation of UAI and of CSAR;
 - h. all documents relating to all statements or actions by any person in support of, in opposition to, or otherwise expressing opinions about either acquisition or its effects;
 - i. all documents relating to MSC's accounting or tax treatment of each acquisition, including any writeoff of goodwill from each acquisition;
 - j. all documents relating to any efficiencies, cost savings, economies, synergies, or consumer or other benefits from each acquisition and whether such efficiencies, cost savings, economies, synergies, or other benefits could be achieved without acquiring UAI or CSAR;
 - k. documents sufficient to show the name, address, and job responsibilities of all persons employed by or acting as a consultant or agent to either UAI or CSAR at any time since January 1, 1998, and whether MSC hired or retained the person as an employee, consultant, or agent for any period since making each acquisition; all employment or consulting contracts with each such person; and all documents relating to salaries, compensation, bonuses, stock options, or other financial incentives paid or provided to the person by any person; and
 - l. all documents relating to each job, program, or project assigned or given by MSC to each former UAI or CSAR employee, consultant, or agent employed or retained by MSC, including documents sufficient to show (i) the contribution and performance of each such person to the job, program, or project, (ii) the goal or objective of the job, program, or project, (iii) the dates the job, program, or project began and concluded, (iv) the personnel requirements for the job, program, or project, (v) the name, address, and job responsibilities of other persons working on job, program, or project, (vi) the job's, program's, or project's budget, including personnel costs, and (vii) the recruiting efforts undertaken to staff the program or project.
8. All documents relating to the competitive significance, actual or projected financial status or condition, and long term viability of UAI or CSAR prior to their acquisitions by MSC, including UAI's or CSAR's intentions or attempts to sell UAI or CSAR, UAI's or CSAR's plans to exit the market or to cease supplying any relevant product or service, and ability to engage in the continuing sales, licensing, marketing, development, programming, and customer support of any relevant product or service.

9. All documents relating to any person's plans relating to any relevant product or service or to any product or service compatible with any relevant product or service, including business plans; short term and long range strategic plans and objectives; joint venture, partnering, strategic alliance, and acquisition strategies and plans; budgets, financial statements, and financial projections; personnel recruitment or reassignment plans; plans for new products or product enhancements, features, modules, applications, or services; research or development plans; strategies for product integration; distribution plans and agreements; sales or marketing plans; plans regarding shifting from product pricing that includes service to pricing products and services separately or shifting from commodity pricing of any relevant product toward greater revenue realization from any relevant service whereby customers pay directly for such services, plans and strategies for use of unlimited usage agreements and paid-up licenses; customer support services and customer-funded development plans; analyses of customer satisfaction; and plans for participation in or adoption of the AP209 exchange format standard.
10. All documents relating in any person's prices, pricing decisions, pricing proposals, licensing fees, or cost of services relating to any relevant product or service generally or with respect to any particular customer or groups of customers, including standard and non-standard price lists, discount schedules and practices, pricing formulae for CMV, GLV, and BLV factors, campus and token pricing systems, pricing commitments, pricing for features, modules, and enhancements, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analyses, cost analyses, supply and demand analyses, analyses regarding shifting from product pricing that includes service to pricing products and services separately or shifting from commodity pricing of any relevant product toward greater revenue realization from any relevant service whereby customers pay directly for such services, pricing negotiations, pricing for unlimited usage contracts, paid-up licence pricing, guidance to marketing or sales personnel regarding prices, presentations to customers relating to prices, pricing for development contracts, on-site and off-site service contracts, price for web sales and licensing, and all documents considered by or emanating from person, committee, or group making a pricing decision, recommendation, or proposal, including pricing packaging group and global pricing package committee.
11. All documents relating to competition in the design, development, enhancement, research, manufacturing, distribution, licensing, marketing, sale, support or service of any relevant product or service, including all documents relating to:
 - a. the market share or competitive position of the company or any of its competitors;
 - b. the relative strengths or weaknesses of any person producing or selling any product or service competing with any relevant product or service;

- c. the relative strengths and weaknesses and differences in capabilities, features, enhancements, and modules between or among any relevant products or services;
 - d. any actual or potential conditions affecting the supply, demand, entry, cost, price, quality, features, enhancements, modules, or applications relating to any relevant product or service;
 - e. efforts to win customers or sales from other companies, or the loss of customers or revenues due to competition or sales by other companies;
 - f. the effects of competition from any supplier of any relevant products or services, including MSC, UAI and CSAR, on sales, pricing, revenues, customers, development, features, enhancements, modules, or applications;
 - g. customers' use of in-house codes, traditional methods of product testing, or prototyping; and
 - b. lock-in effects or switching costs, including the use of unlimited usage agreements and paid-up licenses.
12. All documents relating to switching, including shifts in utilization, between or among any relevant product or service and any other product or service, including the relative ease or difficulty of switching; the estimated, projected or actual costs incurred by users to switch; the time required to switch; the degree of switching possible; the effect on a user's price from switching or shifting utilization or threatening to switch or shift or the availability of the opportunity to switch or shift; the cost of switching attributable to lost productivity while gaining proficiency in the new product or service or from use of a less than optimum product or service; the cost of and time required for training; the cost of and time required for translating or converting existing files, models, routines, commands, DMAP alters, or other legacy materials to the new product or service; the effect of switching on customer or collaborator relationships; the effect of unlimited usage contracts or paid up licenses on switching; the possible loss or cost of complementary software used with the product or service; the use, availability, and the availability and effect of translators and AP209 exchange format standards; and governmental, customer, contractual, or industry or collaborator requirements, preferences, or practices requiring use of or production of analyses or results in any particular software format.
13. All documents relating to actual, attempted, or potential entry into the market for any relevant product or service, including all documents relating to:
- a. the timeliness, conditions, costs, attractiveness, likelihood, or competitive significance of any such entry,

- b. the effects of unlimited usage contracts, paid up licenses, or any existing contracts by existing firms upon such entry;
 - c. the requirements for such entry including research and development, planning and design, production requirements, distribution systems, service requirements, patents, licenses, trademarks, sales and marketing activities, securing a sufficient customer base to achieve minimum viable scale, personnel and staffing, and any necessary governmental and customer approvals, and the time necessary to meet each such requirement;
 - d. the effects of open or closed software architecture and applications programming interfaces and the availability of translators, AP209 exchange format standards, trademarks, copyrights, patents, or other technology upon such entry;
 - e. the total costs required for such entry, including:
 - (i) the amount of such costs that would be recoverable if the entrant were unsuccessful or elected to exit the licensing or sale of the product or service; and
 - (ii) the methods and amount of time necessary to recover such costs; and the total non-recoverable costs entailed in satisfying the requirements for entry; and
 - f. the minimum viable scale, the minimum and optimum number of products or services, requirements for multi-product, or vertically integrated operations, or other factors required to attain any available cost savings or other efficiencies necessary to compete successfully in the licensing or sale of such relevant products or services.
14. All documents relating to the development or acquisition, including licensing, of any features, enhancements, modules, or applications for any Nastran product since January 1, 1995, including any such development or acquisition considered but not undertaken during that period, including:
- a. documents sufficient to show the feature, enhancement, module, or application, the price or charge to the customer for each such feature, enhancement, module, or application, the date each such feature, enhancement, module, or application was added, and the function and benefits of such feature, enhancement, module, or application;
 - b. for all features, enhancements, modules, and applications developed in-house or considered for in-house development, all documents relating to the in-house

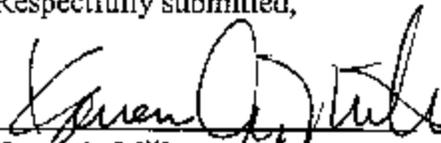
- development, development plans and strategies, time lines for development, budget and projected revenue for the development, personnel requirements, and the identity of customers likely to license the developed product; and any analyses whether to develop in-house or to acquire or license such feature, enhancement, module, or application;
- c. for all features, enhancements, modules, and applications co-developed with a customer or considered for such co-development, all documents relating to the development, development plans and strategies, the co-developer customer's identity, time lines for development, budget and projected revenue for the development, personnel requirements, and the identify of other customers likely to license the developed product;
 - d. for all features, enhancements, modules, and applications co-developed with another supplier of FEA software or considered for such co-development, all documents relating to the development, development plans and strategies, the co-developer supplier's identity, time lines for development, budget and projected revenue for the development, personnel requirements, and the identify of customers likely to license the developed product; and
 - e. for all features, enhancements, modules, and applications acquired, including licensing, by the company or considered for acquisition, all documents relating to the acquisition or licensing of such feature, enhancement, module, or application, the projected revenue for the feature, enhancement, module, and application, the identity of customers likely to license the developed product, and any analyses whether to develop in-house or to acquire or license such feature, enhancement, module, or application.
15. All documents relating to any change and modification to any MSC software product, proposed, implemented, or considered by MSC, that affected or could affect the compatibility of any MSC product to work or interface with any other software products, including any customer's pre- and post-processors or input or output file formats or models, the customer's ability to switch among Nastran products, or the cost, time required, ease, or difficulty of switching from any Nastran product supplied by MSC to any other product.
 16. All documents relating to the licensing or sale of any relevant product or service to all customers, including customer-funded development, including
 - a. all contracts, license agreements, offers, bids, bid solicitations, or proposals for contracts and licensing agreements and all documents interpreting, modifying, or amending such contracts, license agreements, offers, bids, or proposals;

- b. strategic, sales, and marketing plans for licensing and serving the customer, including sales call reports and sales presentations and pitches;
 - c. price lists, negotiation correspondence, price escalation calculations, documents relied upon to formulate or calculate prices, projections of prices offered by other suppliers of relevant products or services;
 - d. field and headquarters sales and contract files;
 - e. reports of prior or existing usage; and
 - f. invoices for products and services; and record of payment for products or services.
17. All documents relating to personnel and staffing for the development and technical support of any relevant product and service, including:
- a. all practices, policies, plans, agreements, and proposals relating to hiring and retention of employees, including recruiting efforts, employment incentives and bonuses, wage, salary, bonus, and stock option offers and agreements, incentives and restrictions on employee mobility, covenants not to compete, job advertisements, and the use of recruiting firms;
 - b. all documents relating to the use of off-shore developers and the use of contractors and consultants; and
 - c. all documents relating to the personnel and staffing needs for any general or specific job, program, or project, including customer-funded development projects.
18. All documents relating to any plans of, interest in, or efforts undertaken by the company or any other person for any acquisition, divestiture, joint venture, alliance, or merger of any kind involving the licensing or sale of any relevant product or service, including:
- a. any acquisition, joint venture, alliance, or merger of any kind with UAI or CSAR by any person;
 - b. the divestiture or sale by MSC of any former UAI or CSAR assets, intellectual property, employees, contracts, customer relations, or UAI's or CSAR's former businesses as going concerns;
 - c. any strategic business relationship between MSC and Dassault Systemes or any Dassault affiliated person or between MSC and IBM or any IBM affiliated person; and

- d. any acquisition of an interest in MSC by Dassault Systemes or any Dassault affiliated person.
19. All documents relating to financial or economic methodologies, formulae, or performance models or criteria used by the company or any person for valuing or determining the purchase prices for any actual, attempted, or potential acquisitions, divestitures, joint ventures, alliances, or mergers of any kind involving the licensing or sale of any relevant product or service.
 20. All license agreements for any intellectual property, including patents, copyrights, trademarks, or trade secrets, owned by any person other than the company and included in or furnished with any Nastran product or service, including all documents modifying, amending, or interpreting such agreements, all documents relating to payment of any licensing fees, and all documents relating to the company's plans, actions, or efforts to enforce such agreements against any person.
 21. All documents relating to any governmental, customer, contractual, industry, network, or collaborator requirements, preferences, custom, or practices requiring, recommending, suggesting, dictating, or promoting the use of any particular relevant product, including Nastran.
 22. Documents sufficient to show and all computerized data containing each transaction for the licensing or sale of any Nastran product or service for the period January 1, 1995, to the present, including:
 - a. the date of transaction,
 - b. the amount of the transaction,
 - c. the quantity,
 - d. the type and duration of the contract or license,
 - e. a description of each product or service licensed or sold (including product number or code),
 - f. the contract number,
 - g. the location, including physical address and serial number, of the computer where the software is located or service rendered,
 - h. the SIC code, trade or industry category, and business group of the customer, and

- i. **the price paid for each item, including the beginning price, discount, net price, quantity, and units of usage, and as may be applicable.**
23. **For each relevant product or service offered for sale or licensing, all selling aids and promotional materials and all manuals, including instructional and installation manuals.**

Respectfully submitted,



Karen A. Mills

**Counsel Supporting the Complaint
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580
(202) 326-2052
Facsimile (202) 326-3496**

Dated: November 21, 2001

VERIFICATION

I personally supervised the preparation and assembly of this response in accordance with the Definitions and Instructions set forth in Complaint Counsel's First Request for Production of Documents and Things Issued to Respondent MSC Software Corporation in Docket No. 9299. All copies submitted in lieu of originals are true, correct and complete copies of the original documents. This response is complete and correct to the best of my knowledge and belief.

Signed: _____

Name: _____

Title: _____

Date: _____

Subscribed and sworn to before me this ____ day of

Notary Public

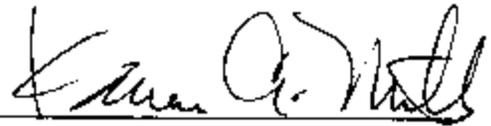
My Commission expires

CERTIFICATE OF SERVICE

This is to certify that on November 21, 2001, I caused a copy of the attached Complaint Counsel's First Request for Production of Documents and Things Issued to MSC Software Corporation to be served upon the following person by facsimile transmission and by hand-delivery:

Marimichael O. Skubel, Esquire
KIRKLAND & ELLIS
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 879-5034
Fax (202) 879-5200

Counsel for MSC Software Corporation



Karen A. Mills
Counsel Supporting the Complaint
Bureau of Competition
Federal Trade Commission
Washington, D.C. 20580
(202) 326-2052
Facsimile (202) 326-3496

Exhibit B



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 26, 2001

Via Facsimile Transmission
(202) 879-5200

Marimichael O. Skubel, Esq.
Kirkland & Ellis
655 Fifteenth Street, N.W.
Washington, DC 20005

Re: MSC Software Corporation
FTC Docket No. 9299

Dear Ms. Skubel:

We received your December 21, 2001, letter proposing modification of Complaint Counsel's First Request for Production of Documents and Things, and the supporting information you sent. Based upon this information, and our previous meeting and telephone conferences, Complaint Counsel agree to modify Complaint Counsel's First Request for Production of Documents and Things as follows:

1. Specification 9 is modified at the beginning to read:

All documents relating to any person's plans relating (a) to any relevant product or service, and (b) to any product or service compatible with any relevant product or service (where those plans affected or may affect compatibility with any relevant product, ability to interface with any relevant product, cost or difficulty of switching among products, case of entry into the market for any relevant product or service, customer utilization of any relevant product, or the demand for any relevant product), including business plans . . .

2. Specification 15 is modified to read:

All documents relating to any change and modification to any MSC software product, proposed, implemented, or considered by MSC, that affected or could affect the compatibility of any MSC product to work or interface with any relevant product, or with any customer's pre- or post-processor, input or output file formats, customers' ability to switch among Nastran products, or the cost, time required, ease, or difficulty of switching from any Nastran Product supplied by MSC to any other product.

Marimichael O. Skubel, Esq.
December 26, 2001

Page 2 of 2

3. Responsive documents will be produced from MSC customer contract files for all years since January 1, 1995, for those Nastran customers who spent more than \$25,000 in the aggregate on MSC products in any given year since January 1, 1995, provided, however, that responsive documents must be produced from customer contract files for all customers identified on Complaint Counsel's December 17, 2001, preliminary witness list, and for OAO Corporation and Hughes Space and Communications Company. This modification applies only to MSC customer contract files, and does not apply to UAI and CSAR customer contract files.

Complaint Counsel see no basis in the information you have provided for further modification of the Complaint Counsel's First Request for Production of Documents and Things.

Very truly yours,

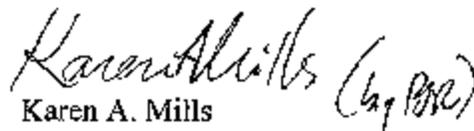

Karen A. Mills
Complaint Counsel

Exhibit C

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
MSC.SOFTWARE CORPORATION,)	Docket No. 9299
a corporation.)	
)	

**ORDER GRANTING COMPLAINT COUNSEL'S MOTION TO
COMPEL COMPLIANCE WITH COMPLAINT COUNSEL'S
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS**

IT IS HEREBY ORDERED that Complaint Counsel's Motion to Compel Compliance with Complaint Counsel's First Request for Production of Documents and Things, as modified by Complaint Counsel's letter of December 26, 2001, is GRANTED.

1. Respondent shall continue a rolling production of documents and things responsive to Complaint Counsel's First Request for Production of Documents and Things, as modified by Complaint Counsel's letter of December 26, 2001.

2. Production must be completed by May 17, 2002.

3. The scope of search shall include electronic documents and e-mails, of all persons listed in Respondent's April 3, 2002 letter.

4. Respondent shall properly designate all documents entitled to be marked CONFIDENTIAL or RESTRICTED CONFIDENTIAL, and correct erroneous designations by submitting properly marked documents, for all documents identified by Complaint Counsel and all documents identified by Respondent as trial exhibits, one week after such documents have been identified as trial exhibits.

Dated: _____

D. Michael Chappell
Administrative Law Judge

Exhibit D

KIRKLAND & ELLIS

PARTNERSHIPS INCLUDING PROFESSIONAL CORPORATIONS

855 Fifteenth Street, N.W.
Washington, D.C. 20005

202 879-5000

Facsimile:
202 879-5200Via: Michael C. Skubel
To Call Writer Directly:
(202) 879-5034
menmichael_skubel@dc.kirkland.com

April 3, 2002

Karen A. Mills, Esq.
Federal Trade Commission
Bureau of Competition
601 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: MSC Software Corporation, Docket No. 9299

Dear Karen:

After yesterday's conversation, Larissa and I discussed further ways in which Complaint Counsel and MSC could arrive at a compromise with regard to the remaining electronic document production issues, taking into account your need for documents and the substantial cost to MSC. We arrived at the following solution: the documents and e-mail of a select group of top executives have been uploaded to a shared network drive and will be converted and searched for responsiveness by an outside vendor. We will need your prompt approval of the search terms for this search to take place. For the remainder of the persons to be searched, we will request that they review their e-mail and electronic documents and burn relevant documents onto a CD, which we will then "blow back" and review. We are hopeful that this process will allow Complaint Counsel to obtain the documents responsive to its subpoena while keeping the costs from escalating to prohibitive levels.

This proposal rests on two fundamental requisites. First, in accordance with your representation yesterday afternoon, should it be discovered during the course of the document search that a particular person has an inordinate amount of documents seemingly responsive to the subpoena, Complaint Counsel will be open to discussing ways in which to narrow the scope of the subpoena to eliminate the production of redundant material and information that is less important. We have already indicated one such situation which needs to be addressed - Tyler Smithson's seven gigabyte electronic document collection.

Second, MSC would like to have closure on the discussion of the list of MSC personnel subject to an electronic search. Based on our ongoing discussions, it is MSC's

KIRKLAND & ELLIS

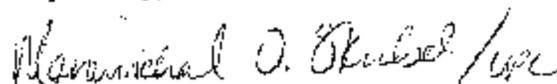
Karen Mills, Esq.
April 3, 2002
Page 2

understanding that the universe of persons to be searched for documents responsive to the subpoena is as follows: Ken Blakely, Lou Greco, Omar Ibrahim, Hal Mattson, Jeff Morgan, Rick Murphy, Frank Perna/Jane Smith, George Riordan, Reza Sadeghi, Joe Baldwin, Rick Barclay, Keane Bartheheimer, Tom Bastanza, David Bee, Tom Cully, Ron Dyer, Bob Lowers, Albrecht Pfaff, Paul Sauer, Bill Torres, Aage Torvold, Todd Brown, Bruce Hart, Lou Long, Bill Maher, John Mowrey, Jim Murphy, Doug Roach, Steve Sacro, Brian Thornton, Bill Wass, Mark Guillam, Kevin Kilroy, Anil Mehta, David Dimas, Mark Kenyon, Greg Moore, Tyler Smithson, Paul Spangler, Paul Wright, Christopher St. John, Wai Ho, and the successor to Mars Tateishi (for a limited amount of time, to be determined). This list totals forty-four people, nine more than MSC had most recently agreed to.

Finally, as mentioned above and in our ongoing conversations, MSC is eager to begin the process of converting and searching the files of the senior executives who will have their files electronically converted and searched. MSC has alerted Complaint Counsel on numerous occasions to the length of time required to complete this process. However, MSC has regularly met opposition to the discussion of this matter until after the finalization of the MSC personnel search list. MSC is hopeful that Complaint Counsel will work with MSC to finalize both the list of personnel to be searched and the list of electronic search terms so that this process can begin.

We look forward to hearing from you as soon as you have had an opportunity to review this information.

Respectfully,



Marnichael O. Skubel

Exhibit E

